

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## ANTICIPATORY BAIL APPLICATION NO.1632 OF 2015

1 Balaji Ramaiah Pillai  
2 Ramaiah Velu Pillai .. Applicants  
*Versus*  
The State of Maharashtra .. Respondent  
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Ms.Sartaj Shaikh, Advocate for the applicant.  
Mrs.Rutuja Ambekar, APP for the Respondent State.  
API Pravin Salunkhe from Naya Nagar P.Stn present.

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**CORAM : PN. DESHMUKH, J**  
**DATED : 22<sup>nd</sup> JULY, 2016.**  
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P.C. :

1 Mediation report is received. According to it, mediation has failed. Same is taken on record.

2 Heard learned counsel for both the sides.

3 Learned counsel for the applicant, at the outset, by referring to documents filed with the application had submitted that both the applicants who are husband and father-in-law of complainant Seema are obviously implicated after lodging of complaint by applicant no.1 against her and after complainant being protected by Anticipatory Bail in that crime by the learned Sessions Court. She has also contended that from the contents of FIR as well as replies filed on behalf of complainant before the Sessions Court as well as before this Court, there is no consistency

in the case of complainant with reference to involvement of applicant no.2 in the alleged offence punishable under section 354A of the IPC, and has therefore sought Anticipatory Bail, contending that during the interim protection, applicants were directed to mark presence with the Investigating Officer, which orders are duly complied by them.

4           Learned APP opposed the application, submitting that according to the Call Data Records (CDR) collected during the course of investigation, it appears that applicant no.2 had on as many as five occasions, contacted complainant on phone by making a phone call from PCO. However, admittedly, there is nothing on record which establish conversation, whatsoever is held between applicant no.2 and complainant. Similarly, inspite of applicants attending police as per order of this Court on three occasions, no voice samples of applicant are stated to have been obtained upto now, without assigning convincing reason. Learned APP by referring to the statements of parents of complainant had submitted that involvement of applicant no.2 is also found, since according to statements of these witnesses, applicant no.2 has requested complainant that he should forgive him for whatsoever act he has committed and apologised her and has thus contended that from the conduct of applicant no.2, his involvement in the present crime is clearly established and therefore, prayed that the application be rejected.

5           Learned counsel for the intervenor – complainant by inviting attention to the medical papers on record, had contended that applicant due to the trauma sustained by her due to the

behaviour of applicant no.2, as aforesaid, had stated in the report, that she is required to obtain medical treatment from a Psychiatrist and by referring to complainant's reply filed before this Court, had submitted that applicant no.2 had extended threats to complainant to apologize him else, he would commit suicide by jumping before the train, and had thus submitted that coupled with these submissions and as submitted by the learned APP, involvement of applicant no.2 is clearly established, and also prayed for rejection of application.

6           Having considering submissions advanced by learned counsel for the parties as aforesaid, and on considering documents filed with the application, and from the case diary made available by the learned APP. From the report dated 8<sup>th</sup> October 2015, it is stated by complainant Seema that applicant no.2 on taking advantage of his being alone in the house with complainant, had outraged complainant's modesty during the month of October 2014 on one occasion saying to complainant that as she is not conceiving out of her marriage, she should develop physical relations with him. Complainant having shocked of what applicant no.2 had stated to her, fell ill, and thereafter, was taken to her parental home by her parents at Kalwa, District Thane.

7           Contents of report as such though, *prima facie* establish involvement of applicant no.2 to have outraged modesty of complainant, before relying upon said contents, it is required to consider whether same are convincing to be acted upon.

8 In this context, when the dates are considered, it appears that the incident reported in FIR is of October 2014, of which report is lodged on 8<sup>th</sup> October 2015. i.e. almost after 1 year. There is nothing on record to explain as to what prevented complainant from lodging report on any earlier date.

9 Without going much into this aspect, as pointed out by learned counsel for the applicant, on perusal of chat dated 18<sup>th</sup> January 2012 on Facebook between complainant and applicant no.1 prior to their marriage which is solemnized on 26<sup>th</sup> February 2012. It reveals that applicant was not willing to marry him as she wanted to prosecute her studies, and has compelled to marry.

10 With reference to contents of report, as aforesaid, on perusal of reply filed by complainant opposing applications for grant of Anticipatory Bail of applicants before the learned Sessions Court as well as before this Court, from paragraph nos.14 and 10 respectively in these replies, it reveals that applicant no.2, after some time of the alleged incident had requested complainant to forgive him as he did not know what had happened to him, and should have not talked like this, and started crying and on begging threatened the complainant not to disclose the incident to anyone, else he would commit suicide by jumping in front of the train. On mere perusal of contents of reply, as aforesaid, it does not establish involvement of applicant in the incident, as stated in the report. On the contrary, on considering the case of applicant of his false implication as put forth, on referring to further documents filed with the application, it reveals that applicant no.1 on 5<sup>th</sup> August 2015, had lodged report against the complainant

with police, wherein it is specifically stated that complainant Seema in the year 2013, had left the house without informing anyone who was thereafter brought back by her parents. However, though she was mentally not prepared to stay with the applicants, in December 2014, she was taken by her parents and thereafter did not return back to her matrimonial home. It is further stated that she has threatened her parents not to reach her back to the applicants, else she would commit suicide. It is further stated that Seema was not on cordial terms with the applicant no.1 as she did not conceive and on this count, had abused applicant no.1. It is also stated that father of complainant was insisting to settle said issue by transferring half of the immovable property / estate owned by the applicants in the name of complainant and to grant her divorce, else they would involve applicants in a false case.

11 In view of report lodged, as aforesaid, original complainant Seema and her father apprehending their arrest on the basis of report as aforesaid, filed Anticipatory Bail Application before the learned Sessions Court which appears to have been decided the learned Sessions Judge on 23<sup>rd</sup> September 2015 protecting applicants therein from their arrest. The date on which application is allowed i.e. 23<sup>rd</sup> September 2015 is relevant in view of the fact that after seeking protection, it appears that applicant on 8<sup>th</sup> October 2015 lodged report against the applicant out of which present application arises, and also initiated proceedings against the provisions of Domestic Violence Act.

12            Having considering above facts, interim protection granted to the applicants by this Court on 20<sup>th</sup> October 2015 needs to be confirmed on same terms and conditions, except for modifying the condition no.(ii) to the effect that applicant shall attend Investigating Officer as and when called till filing of the charge-sheet.

**(PN. DESHMUKH, J)**